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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, and 679

[Docket No.: 190925-0042]

RIN 0648-BI65

Fisheries of the Exclusive Economic Zone off Alaska; Authorize the Retention of Halibut in Pot Gear in the BSAI; Amendment 118

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 118 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and a regulatory amendment to revise regulations on Vessel Monitoring System (VMS) requirements in the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA). This proposed rule is necessary to improve efficiency and provide economic benefits for the Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) fleets, minimize whale depredation and seabird interactions in the IFQ and CDQ fisheries, and reduce the risk of exceeding an overfishing limit for any species. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the BSAI FMP, and other applicable laws.

DATES: Submit comments on or before *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2018-0134, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0134, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Environmental Assessment and the Regulatory Impact Review (collectively referred to as the “Analysis”) and the Finding of No Significant Impact prepared for this proposed rule may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address; by e-mail to OIRA_Submission@omb.eop.gov; or by fax to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages U.S. groundfish fisheries of the BSAI under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the BSAI FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI FMP appear at 50 CFR parts 600 and 679. The Council is authorized to prepare and recommend an FMP amendment for the conservation and management of a fishery managed under the FMP. NMFS conducts rulemaking to implement FMP amendments and regulatory amendments.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC develops regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention, signed at Washington, D.C., on March 29, 1979. The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary. NMFS promulgates the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The final rule implementing the 2019 annual management measures published March 14, 2019 (84 FR 9243).

The Halibut Act provides the Secretary with general responsibility to carry out the Convention and the Halibut Act (16 U.S.C. 773c(a) & (b)). The Halibut Act also provides the Council with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations (16 U.S.C. 773c(e)). Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary in consultation with the United States Coast Guard. Under the authority of the BSAI FMP and the Halibut Act, the Council developed the Individual Fishing Quota Program (IFQ Program) for the commercial halibut and sablefish fisheries. The IFQ Program allocates sablefish and halibut harvesting privileges among U.S. fishermen. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of section 5 of the Halibut Act (16 U.S.C. 773c). The IFQ Program for the sablefish fishery is implemented by the BSAI FMP and Federal regulations at 50 CFR part 679 under the authority of section 303(b) of the Magnuson-Stevens Act (16 U.S.C. 1853(b)).

The Council has recommended Amendment 118 to the BSAI FMP (Amendment 118) to require the retention of halibut by vessels using pot gear in the IFQ and CDQ fisheries in the BSAI, to prohibit the use of pot gear in the PIHCZ, to require vessels using pot gear to fish IFQ and CDQ to use logbooks and VMS, and to develop regulations that allow NMFS to limit or close IFQ or CDQ fishing for halibut if a groundfish or shellfish overfishing level is approached, consistent with existing regulations for groundfish. In recommending Amendment 118, the Council intended to address whale depredation in the IFQ and CDQ fisheries and allow for more efficient harvest of halibut. FMP amendments and regulations developed by the Council may be implemented by NMFS only after approval by the Secretary.

A notice of availability (NOA) for Amendment 118 was published in the **Federal Register** on *[Insert date of publication of the notice of availability in the **Federal Register**]* with comments invited through *[Insert date 60 days after the publication of the notice of availability in the **Federal Register**]*. Comments submitted on this proposed rule by the end of the comment period (See **DATES**) will be considered by NMFS and addressed in the response to comments in the final rule. Comments submitted on this proposed rule may address Amendment 118 or this proposed rule. However, all comments addressing Amendment 118 must be received by *[Insert date 60 days after the publication of the notice of availability in the **Federal Register**]*, to be considered in the approval/disapproval decision on Amendment 118. Commenters do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by *[Insert date 60 days after the publication of the notice of availability in the **Federal Register**]*, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered by NMFS in the approval/disapproval decision for Amendment 118 and addressed in the response to comments in the final rule.

Background

The following background sections describe 1) the IFQ Program, 2) the CDQ Program, 3) IFQ Regulatory Areas, 4) retention of halibut by IFQ or CDQ fishermen using authorized gear, 5) limitations on the use of pot gear to reduce bycatch concerns, and 6) whale depredation in the BSAI.

The IFQ Program

The commercial halibut and sablefish fisheries in the GOA and the BSAI management areas are managed under the IFQ Program that was implemented in 1995 (58 FR 59375, November 9, 1993). The IFQ Program allocates quota share (QS), and each year that quota share

yields an exclusive harvest privilege, an annual IFQ permit, among participants in the fixed gear commercial fishery. An IFQ permit is expressed in pounds and is based on the amount of quota share held in relation to the total quota share pool.

The IFQ Program allows harvesters to tailor their fishing operations to the amount of quota that they hold and avoid an unsafe “race for fish” that can occur when vessels race to harvest their catch as quickly as possible before an annual catch limit is reached. NMFS also allocates a small portion of the annual sablefish total allowable catch limit (TAC) to vessels using trawl gear. The trawl sablefish fishery is not managed under the IFQ Program, and this proposed rule does not modify regulations applicable to the trawl sablefish fishery. Many fishermen participate in both the halibut and sablefish fisheries because the species overlap in some fishing areas and are harvested with the same type of fishing gear.

Each year, NMFS issues IFQ to each QS holder to harvest a specific percentage of either the TAC in the sablefish fishery or the annual commercial catch limit in the halibut fishery. In addition to being specific to sablefish or halibut, QS and IFQ are designated for specific geographic areas of harvest (the regulatory area), a specific vessel operation type (catcher vessel or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut (vessel category). An annual IFQ permit authorizes the permit holder to harvest a specified amount of the IFQ species in a regulatory area from a specific operation type and vessel category. Section 4.5 of the Analysis (see **ADDRESSES**) provides additional information on the sablefish and halibut IFQ Program.

The CDQ Program

The Western Alaska Community Development Program (CDQ Program) was implemented in 1992 (57 FR 54936, November 23, 1992). Subsequently, the Magnuson-Stevens

Act was amended to include provisions specific to the CDQ Program. The purposes of the CDQ Program are 1) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the BSAI management area; 2) to support economic development in western Alaska; 3) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and 4) to achieve sustainable and diversified local economies in western Alaska (16 U.S.C. 1855(i)(1)(A)).

The CDQ Program consists of six different non-profit managing organizations (CDQ groups) representing different geographical regions in Alaska. The CDQ Program receives annual allocations of TAC for a variety of commercially valuable species in the BSAI groundfish, crab, and halibut fisheries, which are in turn allocated among the CDQ groups. CDQ groups use their allocations of halibut to provide opportunities for small vessel fishing by residents of their member communities. Pacific halibut is an important species allocated to CDQ groups for community resident employment and income. NMFS allocates halibut to CDQ groups, and those allocations correspond with the geographic area in which a CDQ group's member communities are located (see Section 4.5.1.2 of the Analysis). A CDQ group may transfer its halibut CDQ to another CDQ group provided that CDQ group has halibut CDQ allocations in the same regulatory area (50 CFR 679.31(c)). Section 4.5.2 of the Analysis provides additional detail on the history of the CDQ halibut fishery.

IFQ Regulatory Areas

The IFQ and CDQ fisheries are prosecuted in accordance with catch limits established by regulatory area. The sablefish IFQ regulatory areas defined for sablefish in the BSAI are the Bering Sea (BS) and the Aleutian Islands (AI). The sablefish regulatory areas are defined and

shown in Figure 14 to 50 CFR part 679. This proposed rule preamble refers to these areas collectively as sablefish regulatory areas.

This proposed rule would implement provisions that affect IFQ halibut and CDQ halibut fisheries in the BSAI. The IPHC defines halibut regulatory areas (Areas). The Areas are defined in 50 CFR part 679 and described in Figure 15 to 50 CFR part 679 and Section 1.3 of the Analysis. NMFS issues halibut IFQ and CDQ consistent with the IPHC's Areas. Halibut Areas encompass different geographic ranges than the sablefish regulatory areas, and the boundary lines do not coincide except at the border between the United States and Canada. For halibut, Area 2 is composed of Area 2A (Washington, Oregon, and California); Area 2B (British Columbia); and Area 2C (Southeast Alaska). Area 3 is composed of Area 3A (Central Gulf of Alaska) and Area 3B (Western Gulf of Alaska); and Area 4 (BSAI) is composed of Areas 4A, 4B, 4C, 4D and 4E. The IPHC combines Areas 4C, 4D, and 4E into Area 4CDE for purposes of establishing a commercial fishery catch limit. Area 4CDE, Area 4B, and portions of Area 4A roughly correspond to the Bering Sea and Aleutian Islands Area defined in the BSAI FMP. A portion of Area 4A also includes part of the Western Regulatory Area of the GOA, as defined in the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). Action 1 under this proposed rule would apply within Areas 4B, 4C, 4D, 4E, and that portion of Area 4A that occurs in the Bering Sea and Aleutian Islands Area defined in the BSAI FMP.

The commercial catch limits for Areas 4B and 4CDE are allocated between two distinct management programs: the CDQ Program and the IFQ Program. Throughout the duration of the IFQ Program, the Area 4E commercial catch limit has been exclusively allocated to the CDQ Program; therefore, no Area 4E QS is allocated to non-CDQ Program participants.

Retention of Halibut by IFQ Sablefish Fishermen Using Authorized Gear

IFQ sablefish fishermen who also hold halibut IFQ are required to retain halibut of legal-size. Currently, the IPHC requires the retention of all halibut 32 inches or greater in length (84 FR 9243, March 14, 2019), although the IPHC may recommend in its annual management measures changes to the size limit for the retention of halibut. This retention requirement is intended to promote full utilization of halibut by reducing discards of halibut caught incidentally in the IFQ sablefish fishery. Many IFQ fishermen hold both sablefish and halibut IFQ, and the species can overlap in some fishing areas (see Section 4.5.2 of the Analysis).

Pot gear has long been an authorized gear type for vessels that harvest IFQ sablefish and CDQ sablefish in the BSAI, and is now an authorized gear in the GOA. Beginning in 2017, Amendment 101 to the GOA FMP and implementing regulations authorized the use of longline pot gear in the GOA IFQ sablefish fishery (81 FR 95435, December 28, 2016).

The IPHC authorizes fishing gear for halibut in the BSAI through its annual management measures and regulations. The IPHC meets annually to approve the regulations that apply to persons and vessels fishing for and retaining halibut. In 2016, the IPHC recommended, and the U.S. approved, regulations to authorize the retention of halibut by vessels using pot gear in the GOA (81 FR 14000, March 16, 2016). Although the IPHC took action to authorize the use of pot gear to retain halibut, accompanying action was required by NMFS to authorize the use of longline pot gear for the commercial halibut fishery in Federal regulations under 50 CFR part 679. Therefore, the final rule implementing Amendment 101 to the GOA FMP also included regulations developed under the Halibut Act to authorize harvest of IFQ halibut caught incidentally in longline pot gear used in the GOA IFQ sablefish fishery.

However, in the BSAI, IFQ sablefish fishermen who hold halibut IFQ currently are required to discard legal-size halibut that are harvested in the IFQ sablefish pot gear fishery.

After implementation of Amendment 101 to the GOA FMP, IFQ sablefish fishermen requested greater consistency between the regulatory requirements in the BSAI and in the GOA, and sought revisions to regulations to authorize the retention of halibut while fishing for sablefish with pot gear in the BSAI to reduce the potential for discarding legal-sized halibut. Section 1.2 of the Analysis provides a more detailed description of the history of use of pot gear in the IFQ sablefish fishery.

In 2018, the IPHC recommended, and the U.S. approved, regulations to authorize the retention of halibut by vessels using pot gear throughout Alaska (83 FR 12133, March 20, 2018). Section 20(1) of the IPHC's 2019 annual management measures authorizes a person to retain and possess IFQ halibut or CDQ halibut taken with hook-and-line or pot gear in the IFQ or CDQ fisheries provided retention and possession is authorized by NMFS regulations published at 50 CFR part 679. If the Secretary approves a final rule to implement Amendment 118, NMFS would amend regulations to require vessel operators using pot gear and holding sufficient halibut IFQ or CDQ to retain legal-size halibut in the BSAI IFQ or CDQ halibut or sablefish fisheries, as recommended by the Council and the IPHC. This regulatory requirement would be consistent with section 773c(c) of the Halibut Act (16 U.S.C. 773c(c)).

Limitations on the Use of Pot Gear to Reduce Bycatch Concerns

Pribilof Islands Blue King Crab (PIBKC) are overfished and experienced overfishing most recently in 2016. Rebuilding the PIBKC stock has been a Council priority since 2002, when NMFS notified the Council that the PIBKC stock was overfished. NMFS initiated a rebuilding plan in 2002, and when that rebuilding plan did not rebuild PIBKC, a new rebuilding plan was instituted in 2011. In order to further protect PIBKC, the Council recommended

closing the Pribilof Islands Habitat Conservation Zone (PIHCZ) year-round to directed fishing for Pacific cod with pot gear to minimize the bycatch of PIBKC.

Bycatch of PIBKC in pot gear is a concern in the BSAI, particularly in areas where PIBKC are concentrated. The greatest concentration of PIBKC is within the PIHCZ. The PIHCZ is defined in § 679.22(a)(6) and shown in Figure 10 to 50 CFR part 679. Initially, the PIHCZ was closed to directed fishing for groundfish using trawl gear to minimize the bycatch of PIBKC. In 2014, NMFS implemented Amendment 103 to the BSAI FMP to prohibit the use of Pacific cod pot gear in the PIHCZ to promote bycatch reduction of PIBKC (79 FR 71344, December 2, 2014). No pot fishing for Pacific cod has occurred within the PIHCZ since 2015. However, this existing pot gear closure in the PIHCZ does not include pot gear when fishing for halibut and sablefish. Section 3.6 of the Analysis provides more information about PIBKC and the PIHCZ.

In addition to the current closure of the PIHCZ to all trawl gear and Pacific cod pot gear, regulations in § 679.25 provide NMFS with inseason management authority to issue precise closures to BSAI groundfish and shellfish fisheries if a stock, in this case PIBKC, approaches its acceptable biological catch limit and is approaching the overfishing level (OFL). Regulations in § 679.25 describe a series of progressively more restrictive measures that NMFS may implement if a stock approaches an OFL, including closures of specific geographic areas, limitations on use of specific gear, and closures of specific fisheries, if necessary, to ensure an OFL is not exceeded.

Whale Depredation in the BSAI

At its June 2017 meeting, the Council received a public comment letter describing a worsening situation of whale depredation on BSAI IFQ hook-and-line gear. Killer whale (*Orcinus orca*) depredation is most common in the BSAI. Section 3.5 of the Analysis provides

the most recent information on whale depredation in the IFQ sablefish and IFQ halibut fishery, and Figure 11 in the Analysis shows a map of observed depredation on sablefish longline surveys. Whale depredation events are difficult to observe because depredation occurs near the ocean floor in deep water or during active gear retrieval. Fishery participants have testified to the Council that depredation continues to be a major cost in the IFQ sablefish and IFQ halibut fisheries and appears to be occurring more frequently in the BSAI.

Depredation can reduce fishing efficiency by increasing operating costs (e.g., fuel, labor) and the opportunity cost of time lost that would have been available for additional fishing effort or dedicated to other fishing and non-fishing activities. Depredation can result in lost catch, additional time waiting for whales to leave fishing grounds before hauling gear, and additional time and fuel spent relocating to avoid whales. Information provided in Section 3.5.3 in the Analysis indicates that depredation can reduce harvesting efficiency and impose substantial costs, thereby reducing revenue in the IFQ halibut and sablefish fisheries.

Industry groups have tested a variety of methods to deter whales from preying on fish caught on hook-and-line gear, such as gear modifications and acoustic decoys, but these methods have not significantly reduced the problem of depredation in the BSAI IFQ sablefish and IFQ halibut fisheries. A summary of efforts to mitigate whale depredation in Alaska and elsewhere is provided in Section 3.5.2 of the Analysis.

Participants in the BSAI IFQ fisheries indicated to the Council and NMFS that authorizing the use of pot gear for IFQ halibut fishing could reduce the adverse impacts of depredation for those vessel operators who choose to switch from hook-and-line to pot gear. Section 1.2 of the Analysis provides additional information on the Council's development and recommendation of Amendment 118 and this proposed rule.

Need for Amendment 118 and this Proposed Rule

Amendment 118 and this proposed rule would address several key management issues. First, this proposed rule would authorize the use of pot gear to target IFQ and CDQ halibut and would authorize the retention of halibut in the existing IFQ or CDQ sablefish pot fisheries. The proposed rule also would require retention of legal-sized halibut in pot gear used to fish for IFQ or CDQ halibut or sablefish in the BSAI provided the IFQ or CDQ permit holder holds sufficient halibut IFQ or CDQ for the retained halibut. Requiring retention of legal-sized halibut incidentally harvested while fishing for sablefish using pot gear would minimize discard mortality and would allow the development of a halibut pot fishery that could reduce fishery interactions with killer whales throughout the BSAI. This proposed rule would improve the ability of sablefish and halibut IFQ and CDQ permit holders to harvest their IFQ or CDQ by reducing potential whale depredation, reducing the costs associated with whale depredation, and reducing the additional mortality that may be caused by whale depredation. Second, this proposed rule would establish regulations to prohibit all use of pot gear for groundfish and halibut in the PIHCZ to limit the potential adverse effects on PIBKC from the use of pot gear. Third, this proposed rule would exempt vessel operators fishing IFQ or CDQ halibut or sablefish with pot gear from the requirement to have a tunnel opening of a specified size when the operator is required to retain halibut. Fourth, this proposed rule would specify the regulatory authority NMFS would use to limit or close IFQ or CDQ halibut fishing in the event there is a conservation concern for groundfish or shellfish. Finally, this proposed rule would require the use of VMS and logbooks and would add requirements for the Prior Notice of Landing (PNOL), in order to ensure accurate monitoring of the use of pot gear to retain halibut.

In addition, NMFS proposes to modify existing regulations governing VMS. First, NMFS proposes to remove two obsolete reporting requirements at §§ 679.28 and 679.42 that are no longer necessary for management or enforcement purposes. Removing these obsolete requirements will reduce reporting costs for vessels in the BSAI and GOA. Second, NMFS proposes to modify the VMS regulations at § 679.28, and related prohibitions at § 679.7, to provide clarity regarding the VMS requirements for vessels in the BSAI and GOA.

Proposed Rule

This section describes the proposed changes to current regulations. This proposed rule includes two actions that would revise 50 CFR part 300, 50 CFR part 600, and 50 CFR part 679. The primary action, Action 1, proposes management measures that would authorize retention of legal-size halibut in pot gear in the BSAI. The scope of this action would not authorize the retention of halibut IFQ or CDQ in other directed pot fisheries, including crab fisheries and Pacific cod fisheries. Action 2 would modify regulations to provide clarity and to remove from regulation two VMS requirements that are no longer necessary.

Action 1: Authorize the Use of Pot Gear to Retain Halibut and Other Related Regulatory Provisions

Action 1 would include the following five elements: 1) authorize retention of legal-size halibut in pot-and-line or longline pot gear used to fish for IFQ or CDQ halibut or sablefish in the BSAI and require retention of legal-sized halibut provided the IFQ or CDQ permit holder holds sufficient halibut IFQ or CDQ for that retained halibut; 2) close the PIHCZ to all groundfish and halibut fishing with pot gear; 3) remove the requirement for a 9-inch maximum width tunnel opening when an IFQ or CDQ permit holder fishes for halibut or sablefish IFQ in the BSAI with pot gear and is required to retain halibut; 4) clarify the inseason management

measures, and determinations required, that NMFS would use to limit or close IFQ or CDQ fishing for halibut if an OFL is approached for a groundfish or shellfish species, consistent with regulations in place for groundfish; and 5) require logbooks and VMS for all vessels using pot gear to retain halibut and sablefish and add requirements for reporting on the PNOL.

This action would not authorize the retention of IFQ halibut or CDQ halibut in other directed pot fisheries, other than sablefish. That means that an IFQ permit holder or a vessel fishing on behalf of a CDQ group would not be permitted, nor would they be required, to retain halibut on a pot fishing trip while directed fishing in other pot fisheries (e.g., Pacific cod or crab), even if they hold available IFQ or CDQ.

The first action would authorize the harvest of IFQ halibut or CDQ halibut with pot gear and would provide halibut quota holders the opportunity to use pot gear on a trip solely intended to harvest halibut, or on a mixed trip in which both halibut and sablefish are the intended target, provided the vessel has quota for the appropriate areas for both species. Section 679.7(f)(11) prohibits IFQ permit holders from discarding halibut or sablefish caught with fixed gear for which they hold unused halibut or sablefish IFQ or CDQ for that vessel and IFQ regulatory area. Consistent with that regulatory requirement and with proposed § 679.42(m)(2) & (3), Action 1 would prohibit IFQ and CDQ permit holders fishing in the BSAI with pot gear from discarding legal-size halibut for which they have the necessary quota. IFQ and CDQ participants that hold both sablefish and halibut quota would have more flexibility to use their quota opportunistically and minimize variable costs.

This proposed rule would revise the definition of “Fishing” at § 300.61 to include the deployment of pot gear in the BSAI halibut IFQ or CDQ fishery.

This proposed rule would revise § 679.2 to include pot gear as authorized fishing gear in the BSAI IFQ and CDQ fisheries. Specifically, this proposed rule would revise the definition of “Fixed gear” under the definition of “Authorized fishing gear” at § 679.2(4)(v) to include pot gear as an authorized gear in the BSAI halibut IFQ or CDQ fishery. The regulations currently define fixed gear for sablefish harvested in the BSAI to include hook-and-line gear and pot gear (§ 679.2(4)(ii)). Fixed gear is a general term that describes the multiple gear types allowed to fish sablefish and halibut under the IFQ and CDQ Programs and is referred to throughout 50 CFR part 679. This proposed rule would revise § 679.24 (and § 679.42, discussed later) to require retention of halibut in pot gear in the BSAI IFQ and CDQ fisheries. Specifically, this proposed rule would revise § 679.24(b) to require retention of groundfish for any person using pot gear while directed fishing for sablefish and halibut in the BSAI.

This proposed rule would revise § 679.42(b)(1) to specify that IFQ halibut may be harvested using pot gear, but the proposed rule would not change the existing prohibition on the use of trawl gear.

The second element of Action 1 would close the PIHCZ to all fishing for groundfish and halibut with pot gear to avoid groundfish fishery and area closures that could be triggered by approaching an OFL for the PIBKC. This proposed rule would revise § 679.22(a)(6) to close the PIHCZ to all directed fishing for groundfish and halibut with pot gear. The majority of the PIBKC stock is distributed within the PIHCZ. Regulations at § 679.22 already prohibit the use of pot gear to harvest Pacific cod in the PIHCZ. The Pacific cod pot fishery is the largest groundfish pot fishery in the BSAI. Closing the PIHCZ to pot gear is necessary to avoid groundfish fishery and area closures that could be triggered by approaching an OFL for the PIBKC. Although the existing sablefish fishing grounds do not overlap with the PIHCZ,

historical halibut fishing grounds for vessels using hook-and-line gear do overlap with the PIHCZ. Therefore, a general prohibition on the use of pot gear within the PIHCZ would limit the risk of bycatch of PIBKC by vessels using pot gear in the IFQ or CDQ halibut or sablefish fisheries. Section 3.6 of the Analysis provides additional details on the distribution of halibut and potential overlap with the PIHCZ.

The third element of Action 1 would amend regulations at § 679.2(15) that describe the definition of “Authorized Fishing Gear” to exempt vessel operators fishing halibut or sablefish IFQ or CDQ with pot gear from the requirement to have a tunnel opening no wider and no taller than 9 inches when the vessel operator is required to retain halibut. If the tunnel opening requirement remained in effect, the extent to which halibut quota holders in the BSAI could target halibut with pot gear would be greatly reduced, contrary to the intent of Amendment 118. Section 4.7.4.2 of the Analysis describes this element in more detail.

The fourth element of Action 1 would specify the management measures, and required determinations, that NMFS would use to limit or close IFQ or CDQ fishing for halibut in the BSAI and GOA if an OFL for groundfish or shellfish is approached, consistent with regulations in place for directed fishing for groundfish. Under existing regulations at § 679.25, NMFS has the authority to close groundfish fisheries, including the IFQ or CDQ sablefish fishery, to prevent overfishing of groundfish and shellfish species. However, these regulations do not apply to the IFQ or CDQ halibut fishery to prevent overfishing of groundfish or shellfish. While NMFS has authority to enact emergency regulations to limit fishing to avoid exceeding an OFL under section 305(c) of the Magnuson-Stevens Act and authority under the Halibut Act to implement measures that are in addition to and not in conflict with those adopted by the IPHC (16 U.S.C. 773(c)), the specific regulatory measures that NMFS could use to limit halibut fishing to prevent

overfishing are not described in regulation. This proposed rule would apply the same regulations to limit halibut fishing if an OFL is approached as the procedure used for groundfish species: the proposed rule would authorize NMFS to make inseason adjustments for halibut fishing, including inseason closures of an area, district, or portions thereof, of harvest of halibut fisheries, and would authorize NMFS to close a management area or portion thereof, gear type, or season for halibut fishing, in both the BSAI and GOA, in addition to the existing regulatory authority under § 679.25 for the management of groundfish fishing.

This proposed rule therefore would revise § 679.25 to specify the management measures NMFS can use, and the determinations required, to limit or close halibut fisheries in the BSAI and GOA in the event an OFL is approached for a groundfish or shellfish species, consistent with regulations in place for directed fishing for groundfish. These changes would provide the public with a clear understanding of NMFS's regulatory authority to limit or close halibut directed fishing in the event that the OFL for PIBKC, or other groundfish or shellfish species, is approached. Section 4.7.6 of the Analysis further describes this element in greater detail.

The fifth element of Action 1 would require all vessels fishing IFQ or CDQ sablefish or halibut with pot gear to complete the Daily Fishing Logbook (DFL), to use VMS, and to provide additional pot gear information on the PNOL. A vessel operator records where and when fishing activity occurs and the number of sets and hauls in the DFL. Section 4.7.5 of the Analysis describes reporting and monitoring requirements for vessels using pot gear to fish IFQ, including the existing requirements to use logbooks and VMS. There are several types of logbooks, including a DFL, required by NMFS (§ 679.5) and an IPHC logbook. The Council's intent for this element is to require all vessels fishing sablefish or halibut IFQ or CDQ with pot gear to complete the DFL. The proposed rule would revise regulations at § 679.5 to require vessels

fishing sablefish or halibut IFQ and CDQ to complete the DFL. In addition to the Council's recommendations, NMFS proposes to require vessels to report specific information on the use of pot gear in the BSAI on the PNOL under § 679.5, including adding the requirement to report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds, in addition to the information they currently submit in the PNOL.

Due to concern over additional pot fishing in the PIHCZ and within the PIBKC stock boundary area, NMFS recommended that the Council also require all vessels retaining IFQ or CDQ halibut or sablefish with pot gear use a VMS to ensure consistency in monitoring fishery behavior. The proposed rule would revise § 679.7 to prohibit vessels using pot gear to fish for sablefish or halibut IFQ and CDQ in the BSAI without functioning VMS equipment as would be required under the proposed § 679.42(m).

All vessels that participated in the BSAI IFQ or CDQ sablefish pot fishery in 2016 have VMS and maintain a DFL already. However, additional vessels may use pot gear to harvest IFQ or CDQ halibut or sablefish in the future. Any additional vessels would be required to install VMS and begin maintaining a DFL, as well as report pot gear information on the PNOL, under this proposed rule. Section 4.7.5 of the Analysis provides more information supporting these monitoring and reporting provisions.

To effectuate each of the five elements described above, the proposed rule would also revise § 679.42 to specify at § 679.42(m) the requirements for any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI using pot gear. This includes the proposed requirements that operators must retain legal-sized halibut provided the operator has sufficient IFQ or CDQ for the retained halibut; that all operators must comply with the proposed VMS requirements; that all vessel operators must complete a DFL; and that all vessels operators

must report pot gear set, lost, and left deployed on the fishing grounds when they submit a PNOL.

Finally, to promote consistency and clarity with the provisions proposed under this action, this proposed rule would make editorial revisions throughout regulations at 50 CFR part 679. Existing regulations implementing the Observer Program state the gear type (hook-and-line) used to harvest halibut in the applicability paragraph for which vessels are in partial coverage or full coverage. Regulations at § 679.51(a)(1) would be modified to remove the language describing the specific gear type used to fish for halibut, which is in accordance with this proposed action that would authorize another specific gear type (pot) in addition to hook-and-line gear. This would be an editorial change that would not modify existing observer coverage requirements for vessels participating in the IFQ or CDQ halibut or sablefish fisheries.

Action 2: NMFS's Proposed Regulatory Amendment to Modify VMS Regulations

Action 2 would modify regulations to remove certain provisions that are no longer required for management and enforcement purposes and would make other minor revisions to the regulations governing VMS; however, Action 2 would not materially change existing VMS coverage, requirements, or equipment.

First, this proposed rule would remove from § 679.28 a check-in requirement for vessel owners activating VMS for the first time. Currently, vessel owners are required to check in by fax to register a new unit with the NMFS Office of Law Enforcement (OLE) (§ 679.28(f)(4)(ii)). This faxed check-in is no longer necessary because the information OLE needs about a new VMS unit is provided automatically by the VMS unit when the new unit is activated.

Second, this action would remove from § 679.42 a requirement for vessel operators in the IFQ sablefish fisheries in BSAI and GOA to contact NMFS by phone and receive confirmation

that their VMS unit is operating. Currently, vessel operators are required to call OLE at least 72 hours prior to fishing for IFQ sablefish in the BSAI and prior to using longline pot gear to fish for IFQ sablefish in the GOA (§ 679.42(k)). These vessel clearance requirements are no longer needed because the VMS unit provides the information needed by OLE to monitor these fisheries.

This action also would modify in § 679.28(f)(6) the list of circumstances in which a VMS unit must be transmitting to include reference to all of the VMS requirements elsewhere in 50 CFR part 679 and 50 CFR part 680. The current list is only a partial list of the VMS requirements in Federally-managed fisheries off Alaska. Completion of the list will reduce confusion about the VMS requirements under § 679.28(f), but would not alter existing VMS requirements at § 679.28(f) when a VMS transmitter must be transmitting. The proposed action also would revise two cross references to the VMS requirements in § 679.7(a)(21)-(22) to more accurately refer to the VMS regulations in § 679.28(f). This revision will provide greater clarity and specificity in the VMS regulations without changing existing VMS requirements.

Anticipated Effects of Action 1

This section describes the proposed rule implementing Amendment 118 and the anticipated effects on fishery participants and the environment.

Fishery Participants

This proposed rule would authorize the use of pot gear in the halibut IFQ and CDQ fisheries and would require retention of legal-sized halibut in pot gear used in the existing IFQ and CDQ sablefish pot gear fisheries and in the new IFQ and CDQ halibut pot gear fisheries if the operator has sufficient IFQ or CDQ for the retained halibut. Pot gear includes pot-and-line gear and longline pot gear. Pot-and-line gear is pot gear with a stationary, buoyed line with a

single pot attached. Longline pot gear is pot gear with a stationary, buoyed, and anchored line with two or more pots attached. Longline pot gear is often deployed as a series of many pots attached together in a “string” of gear. For additional information on longline gear, pot-and-line gear, and longline pot gear, see the definition of “Authorized Fishing Gear” in § 679.2.

This action could improve operational efficiency of vessels participating in the IFQ or CDQ halibut or sablefish pot fisheries by reducing the discard mortality associated with halibut discard in the existing sablefish pot fisheries and reducing whale depredation for vessels that would choose to switch to using pot gear instead of hook-and-line gear. The sablefish and halibut hook-and-line gear fisheries are prosecuted simultaneously. Vessels that fish sablefish IFQ typically also fish halibut IFQ. The majority of sablefish IFQ permit holders also hold a halibut IFQ permit (see Section 4.5 of the Analysis). As analyzed in Section 4.7.2 of the Analysis, replacing some hook-and-line effort with pot gear effort could benefit permit holders in the IFQ halibut fishery because many IFQ sablefish fishery participants also participate in the IFQ halibut fishery. This proposed rule would create efficiencies in the harvest of halibut and sablefish for these participants.

The Council and NMFS also considered the impacts of this proposed rule on the hook-and-line IFQ and CDQ halibut fisheries. Based on the analysis in Section 4.7.2 of the Analysis, the overall impact of this proposed rule on the IFQ or CDQ halibut fishery is likely to be small.

As explained in Section 4.5.2 of the Analysis, vessel operators who switch to pot gear to harvest halibut would benefit from this proposed rule from reduced whale depredation, reduced operating costs, and reduced fishing time. This proposed rule would provide vessel operators with the option to use pot gear if they determine it is appropriate for their fishing operation.

The Analysis (see Section 4.7.2.1) recognizes that it is not possible to estimate how many hook-and-line vessel operators would switch to pot gear to harvest halibut under this action.

Vessel operators that currently target sablefish with pot gear would be required to retain incidentally caught halibut. The total number of vessels using pot gear likely would be limited by the costs of pot gear and vessel reconfiguration. For some vessel operators, reconfiguration costs likely would be prohibitive. The Analysis suggests that vessel operators who already use pot gear in other fisheries (e.g., Pacific cod) would be the most likely operators to use pot gear in the BSAI IFQ halibut fishery because their conversion costs likely would be lower relative to participants who currently use only hook-and-line gear.

This proposed rule would require vessel operators that catch halibut in pot gear to comply with current retention requirements under the IFQ Program and the provisions recommended by the Council and would not change other management components of the IFQ Program. The Council recommended, and NMFS agrees, that an IFQ or CDQ permit holder onboard a vessel that catches halibut with pot gear in the BSAI would be required to retain legal-size halibut provided they hold a halibut IFQ or CDQ permit with sufficient halibut IFQ or CDQ pounds to cover the retained halibut. This proposed rule would provide halibut permit holders the opportunity to use pot gear on a trip solely intended to harvest halibut, or on a mixed trip in which both halibut and sablefish are the intended target, provided the vessel has quota for the appropriate areas for both species. Section 679.7(f)(4) prohibits an IFQ or CDQ permit holder from retaining legal-size halibut if no person onboard the vessel holds sufficient IFQ or CDQ pounds to cover the retained halibut. In these instances, fishermen are required to discard the halibut with a minimum of injury consistent with regulatory requirements at § 679.7(a)(13) and Section 15 of the IPHC annual management measures (84 FR 9243, March 14, 2019).

Gear Conflicts

The Council and NMFS analyzed the extent to which this proposed rule could result in gear conflicts and grounds preemption. As explained in Section 4.7.3 of the Analysis, gear conflict and grounds preemption impose costs on fishermen who are unable to, or choose not to, deploy hook-and-line gear in an area because longline pot gear is used in that area. The Council considered possible gear tending regulations while balancing the risk of grounds preemption and gear conflict from a new sector, with the expected effectiveness of the measures and the implications to the BSAI IFQ and CDQ harvesters currently participating or wishing to participate with pot gear. Specifically, vessels unable to convert to pot gear that fish in the same footprint as the pot vessels may be disadvantaged if vessels set pot gear on mutual fishing grounds for extended periods, preventing hook-and-line vessels from deploying gear for fear of gear entanglement. Compared to other IFQ areas, such as in the GOA, the Analysis did not identify, and the Council did not receive public testimony indicating, the potential for gear conflict and grounds preemption concerns that would warrant additional regulatory provisions under this proposed rule.

As explained in Section 4.7.3 of the Analysis, it is extremely difficult to determine with certainty the extent to which gear conflicts and grounds preemption might occur under this proposed rule because it is not known at this time how many vessel operators will use pot gear in the BSAI IFQ or CDQ halibut or sablefish fisheries. After reviewing the Analysis and receiving public testimony, the Council and NMFS determined the likelihood of gear conflicts and grounds preemption was low, but not possible to determine with certainty.

The Council's recommendation did not include gear retrieval requirements based on public testimony, and NMFS is not proposing to include gear retrieval requirements in this

proposed rule. Stakeholders voiced that gear retrieval requirements would negatively impact fishermen in the existing sablefish pot fishery in the BSAI and that it was expected that a limited number of vessels would begin experimentally fishing for halibut using pot gear. Section 4.7.3.3 of the Analysis discusses in more detail the potential impacts of gear retrieval requirements on the existing sablefish pot fishery in the BSAI.

The Council considered and did not recommend requiring an escape mechanism to release undersized halibut or other species as part of this proposed rule. NMFS is not including in this proposed rule a requirement for pot gear to have an escape mechanism. By not including specific recommendations for dimensions of escapement rings or slots at this time, the fleet retains the flexibility to test different gear specifications to minimize bycatch most effectively. Industry-led innovation could be more responsive than regulations to address the range of bycatch issues that may be experienced with a new gear type. NMFS and the Council will continue to review the performance of this gear, and if bycatch increases, additional regulatory revisions could be undertaken.

To implement the Council's recommendation to close the PIHCZ to all fishing with pot gear, the proposed rule would require that all vessels retaining IFQ or CDQ halibut or sablefish in pot gear use logbooks and VMS to ensure consistency in monitoring fishery behavior.

Section 304(d)(2)(A) of the Magnuson-Stevens Act obligates NMFS to recover the actual costs of management, data collection, and enforcement (direct program cost) of catch share programs, such as the IFQ fisheries. Therefore, NMFS implemented a cost recovery fee program for the IFQ fisheries in 2000 (65 FR 14919, March 20, 2000). The cost to implement and manage the IFQ sablefish and halibut pot gear fishery would be included in the annual calculation of NMFS's recoverable costs, and this proposed rule would be included under this cost recovery

program. These costs will be part of the total management and enforcement costs used in the calculation of the annual fee percentage. While costs specific to the CDQ Program for halibut are recoverable through a separate cost recovery program (81 FR 150, January 5, 2016), this rule would not change the process that harvesters use to pay cost recovery fees.

Whale Interactions

If some portion of the IFQ and CDQ halibut fleet switches to pot gear, interactions between whales and the halibut fishery could decrease. Unaccounted halibut mortality due to depredation would be expected to decline as IFQ and CDQ halibut fishermen voluntarily switch from hook-and-line gear to pot gear. Because the amount of depredation is not known with certainty, the potential effects of reduced depredation from this proposed rule cannot be quantified.

Depredation by killer whales and sperm whales is common in the sablefish and IFQ halibut hook-and-line fisheries in the GOA and BSAI. Section 3.5 of the Analysis provides available information on the interactions of the IFQ fishery with killer whales and sperm whales. In the Analysis, NMFS examined data from the commercial fisheries and sablefish survey data and concluded that the use of pot gear would support the purpose and need of this proposed rule to reduce IFQ sablefish and halibut fishery interactions with whales in the BSAI. Use of pot gear is expected to reduce fishing gear interactions with whales and have a positive effect on killer whales and sperm whales compared to the status quo.

Section 3.5.3.2 of the Analysis describes whale entanglement with vertical gear lines in the water. Determining future behavior of fishery participants and potential gear configurations is challenging, so a large amount of uncertainty exists regarding entanglement likelihood. However, based on the very low likelihood of whale entanglements in hook-and-line gear in

Alaska fisheries and based on historic halibut fishing grounds, NMFS expects that whale entanglements with pot gear would be minimal.

Seabird Interactions

This proposed rule would likely reduce the incidental catch of seabirds in the IFQ and CDQ halibut fisheries because it would provide vessel operators with the opportunity to use pot gear, which has a lower incidental catch rate of seabirds than hook-and-line gear. Many seabird species are attracted to fishing vessels to forage on bait, offal, discards, and other prey made available by fishing operations. These interactions can result in direct mortality for seabirds if they become entangled in fishing gear or strike the vessel or fishing gear while flying. In addition, seabirds are attracted to sinking baited hooks and can be hooked and drowned. Hook-and-line gear has the greatest impact on seabirds relative to other fishing gear.

In Section 3.9 of the Analysis, NMFS compared the number of seabird mortalities by hook-and-line and pot gear and determined that a higher level of seabird mortality occurred with hook-and-line gear than pot gear. Data from 2007 to 2017 indicate the annual incidental catch of seabirds in all pot gear fisheries constitutes about 3 percent of total, fisheries-related seabird mortality in Alaska, while hook-and-line gear constitutes 87.3 percent of total, fisheries-related seabird mortality in Alaska. From 2007 to 2017, 62 percent of the average seabird bycatch in all pot gear fisheries was attributed to the BS area.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the regional fishery management councils that have authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters which are in addition to, and not in conflict with, IPHC regulations (16 U.S.C. 773c(c)). This proposed rule is consistent with the Council's authority to allocate halibut catch among fishery participants in the waters in and off Alaska. The Halibut Act provides the Secretary of Commerce with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act (16 U.S.C. 773c(a) & (b)). This proposed rule is consistent with the Halibut Act and other applicable law.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes Amendment 118 and these regulations based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the

economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this action is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

Number and Description of Small Entities Regulated by this Proposed Rule

NMFS estimates that, between the BSAI and the GOA, 815 vessels participated in the IFQ or CDQ commercial halibut fisheries in 2018; 802 of which are considered small entities based on the \$11.0 million threshold. All of these small entities in the BSAI or GOA could be directly regulated by that aspect of the proposed rule that would specify NMFS's regulatory authority to limit or close IFQ or CDQ halibut fishing if NMFS determined it was necessary in the event of a conservation concern for groundfish or shellfish. In addition, vessels that currently

participate in the GOA fisheries would be directly regulated by the proposed rule if they choose to participate in the IFQ or CDQ halibut or sablefish fisheries in the BSAI. NMFS estimates that, in the BSAI, 152 vessels participated in the IFQ or CDQ halibut or sablefish fisheries in 2018. Of those vessels, 125 are considered small entities. In the BSAI sablefish pot fishery, 5 of the 9 total vessels that participated in 2018 are defined as a small entity. Therefore, NMFS estimates a total of 130 small entities that would be directly regulated by this proposed rule if they decide to use pot gear to harvest IFQ or CDQ halibut or IFQ or CDQ sablefish. In addition, a portion of these small entities engaged in the IFQ or CDQ halibut or sablefish fisheries would be subject to the proposed requirements for using pot gear if they choose to use pot gear in the BSAI IFQ or CDQ halibut or sablefish fisheries. In addition, this proposed action would close the PIHCZ to all fishing with pot gear. No entities are currently using pot gear to fish within the PIHCZ, therefore, no additional entities other than the 130 entities engaged in the IFQ or CDQ fisheries would be affected by this provision. Those entities engaged in the IFQ or CDQ fisheries with pot gear in the BSAI would be required to use logbooks and VMS and submit additional pot gear information on the PNOL while IFQ or CDQ fishing with pot gear in the BSAI.

Description of Significant Alternatives that Minimize Adverse Impacts on Small Entities

Several aspects of this rule directly regulate small entities. BSAI halibut harvesters that are directly regulated by this action are expected to benefit from the additional flexibility to use a new gear type in order to minimize the costs of whale depredation that occurs on hook-and-line gear. Additional impacts may be expected for small directly regulated IFQ or CDQ halibut and sablefish harvesters in terms of potential additional costs for daily fishing logbooks, reporting on the PNOLs, or VMS requirements. Small entities would be required to comply with the requirements for using pot gear in the BSAI IFQ and CDQ halibut and sablefish fisheries.

Authorizing halibut retention in pot gear in this proposed rule would provide an opportunity for small entities to choose whether to use hook-and-line or pot gear to increase harvesting efficiencies and reduce operating costs in the IFQ and CDQ halibut and sablefish fisheries. Because NMFS currently has statutory authority to enact emergency regulations to prevent overfishing under section 305(c) of the Magnuson-Stevens Act, NMFS does not anticipate additional costs to small entities from potential inseason closures; however, NMFS expects that this proposed rule would provide better clarity and certainty to the regulated public by specifying in regulation the management measures, and required determinations, that NMFS would use to limit or close IFQ or CDQ fishing for halibut in the BSAI and GOA if an OFL for groundfish or shellfish is approached, consistent with regulations in place for directed fishing for groundfish.

As noted in Section 4.7.12 of the Analysis, the proposed requirements for using pot gear are not expected to adversely impact small entities because such entities could choose to use pot gear or continue to use hook-and-line gear. In addition, the requirements for using pot gear would not be expected to restrict existing sablefish harvesting operations. The Council and NMFS considered requirements that would impose larger costs on directly regulated small entities. These included requiring all vessels to remove gear from the fishing grounds each time the vessel made a landing and requiring gear modifications, such as escape mechanisms for bycatch. The Council and NMFS determined that the costs of additional requirements on the existing fleet outweighed the benefits of increased regulations because the preferred specifications for gear modifications to reduce bycatch are unknown at this time but could be developed by industry in the future if allowed the flexibility to innovate. This proposed rule would meet the objectives of the action while minimizing adverse impacts on fishery participants.

Small entities would be required to comply with additional recordkeeping and reporting requirements under this proposed rule if they choose to use pot gear in the BSAI IFQ or CDQ halibut fishery. Directly regulated small entities using pot gear would be required to maintain and submit logbooks to NMFS, report specific information on the PNOL, and have an operating VMS on board the vessel. These additional recordkeeping and reporting requirements would not be expected to adversely impact directly regulated small entities because the costs of complying with these requirements is de minimus relative to total gross fishing revenue that the opportunity to fish with pot gear would provide. More detail can be found in Section 4.7.5 of the Analysis. In addition, it is likely that vessels will not incur new costs under the proposed rule because many of the vessels that may choose to use pot gear under this proposed rule likely currently comply with the logbook and VMS reporting requirements when participating in the IFQ sablefish fishery and in other fisheries.

The Council and NMFS considered alternatives to implement additional requirements to report locations of deployed and lost gear in an electronic database. The Council and NMFS determined that these additional requirements were not necessary to meet the objectives of the action; could undermine other aspects of the Magnuson-Stevens Act because coordinates of lost pot gear are confidential under section 402(b) of the MSA; and were not practicable at this time because NMFS cannot enforce a location reporting requirement since it is not currently possible to verify the location of lost fishing gear. In addition, this action eliminates the requirement for a one-time report that must be faxed into NMFS OLE, which results in an estimated savings of \$1,340 a year in personnel and miscellaneous costs to the industry. And this action also eliminates the requirements for vessels using pot gear to harvest IFQ sablefish to check-in when using VMS, which results in estimated annual savings of \$268 for all vessel operators in the

BSAI and GOA. This proposed rule would meet the objectives of the action while minimizing the reporting burden for fishery participants.

There are no significant alternatives to this proposed rule that would accomplish the objectives to authorize retention of halibut in pot gear in the BSAI IFQ or CDQ halibut or sablefish fisheries and that would minimize adverse economic impacts on small entities.

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping, reporting, and other compliance requirements of some vessels affected by this action would be increased slightly. This proposed rule contains new requirements for vessels participating in the proposed IFQ and CDQ halibut pot fishery in the BSAI. This proposed rule would remove two unnecessary VMS check-in requirements in the BSAI and GOA.

NMFS currently requires catcher vessels 60 feet (ft) or greater length overall (LOA), using fixed gear, setline, or pot gear to harvest IFQ sablefish or IFQ halibut to maintain a longline and pot gear Federal DFL. Catcher/processors currently must also maintain a daily catcher/processor logbook (DCPL). All vessels participating in the BSAI sablefish IFQ or CDQ pot fishery maintain a longline and pot gear DFL. This proposed rule would revise regulations to also require all vessels using pot gear to harvest IFQ or CDQ halibut in the BSAI to maintain a longline and pot gear DFL.

NMFS currently requires vessels in the BSAI to have an operating VMS on board while participating in the IFQ or CDQ sablefish pot fishery. This proposed rule would revise

regulations to extend this requirement to vessels using pot gear in the BSAI IFQ or CDQ halibut fishery.

NMFS currently requires all vessels in the IFQ sablefish and halibut fisheries to submit a PNOL to NMFS. This proposed rule would revise regulations to require vessels using pot gear in the BSAI IFQ or CDQ halibut fishery to report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds in addition to the information they currently submit in the PNOL.

Two regulations would be removed because they are no longer necessary, but these proposed removals would not materially change existing VMS coverage, requirements, or equipment. This action would remove a check-in requirement for vessel operators activating VMS for the first time and would remove a requirement for vessel operators to contact NMFS and receive a VMS confirmation number at least 72 hours prior to fishing for IFQ sablefish in the BSAI or using longline pot gear to fish for sablefish in the GOA.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under Control Numbers 0648-0213, 0648-0272, and 0648-0445.

OMB Control Number 0648-0213

Public reporting burden is estimated to average 35 minutes per individual response for the Catcher Vessel Longline and Pot Gear Daily Fishing Logbook.

OMB Control Number 0648-0272

Public reporting burden is estimated to average 15 minutes per individual response for the Prior Notice of Landing.

OMB Control Number 0648-0445

VMS transmissions are not assigned a reporting burden because the transmissions are automatic. Public reporting burden is estimated to average 12 minutes per individual response for the VMS check-in report and 12 minutes for the sablefish call-in; both are being removed because they are no longer necessary.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collections of information to NMFS (see **ADDRESSES**), and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fish, Fisheries, Fishing, Fishing regulations, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Date: September 25, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300, 600, and 679 are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773-773k.

2. In § 300.61, add paragraph (3) to the definition of “Fishing” to read as follows:

§ 300.61 Definitions.

* * * * *

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including:

* * *

(3) The deployment of pot gear as defined in § 679.2 of this title in Commission regulatory areas 4B, 4C, 4D, and 4E and the portion of Area 4A in the Bering Sea Aleutian Islands west of 170°00' W. long.

* * * * *

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

3. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

4. In § 600.725, revise paragraph (v) table entry “7. Pacific Halibut Fishery (Non-FMP):”
row A to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

| Fishery | Authorized Gear Types |
|---|------------------------|
| * * * * * | |
| VII. North Pacific Fishery Management Council | |
| * * * * * | |
| 7. Pacific Halibut Fishery (Non-FMP): | |
| A. Commercial (IFQ and CDQ) | A. Hook and line, pot. |
| * * * * * | |

* * * * *

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

5. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447; Pub. L. 111-281.

6. In § 679.2, for the definition of “Authorized fishing gear,” add paragraphs (4)(v) and (15)(iii) to read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear (see also § 679.24 for gear limitations and Table 15 to this part for gear codes) means trawl gear, fixed gear, longline gear, pot gear, and nontrawl gear as follows:

(4) * * *

(v) For halibut harvested from any IFQ regulatory area in the BSAI, all pot gear, if the vessel operator is fishing for IFQ or CDQ halibut in accordance with § 679.42.

* * * * *

(15) * * *

(iii) *Halibut retention exception.* If required to retain halibut when harvesting halibut from any IFQ regulatory area in the BSAI, vessel operators are exempt from requirements to comply with a tunnel opening for pots when fishing for IFQ or CDQ halibut or IFQ or CDQ sablefish in accordance with § 679.42(m).

* * * * *

7. In § 679.5,

- a. Revise paragraph (a)(4)(i);
- b. Revise paragraph (c)(3)(i)(B) heading and paragraphs (c)(3)(i)(B)(I) and (c)(3)(i)(B)(3); and
- c. Revise paragraph (l)(1)(iii)(I).

The revisions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(4) * * * (i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using pot gear as described in paragraph (c)(3)(i)(B)(1) of this section and the vessel activity report described at paragraph (k) of this section, the owner or operator of a catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with the R&R requirements of this section.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) *IFQ or CDQ halibut, or IFQ or CDQ sablefish fisheries.* (1) The operator of a catcher vessel less than 60 ft (18.3 m) LOA, using longline pot gear to harvest IFQ sablefish or IFQ halibut in the GOA, or using pot gear to harvest IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI, must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section.

* * * * *

(3) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA in the BSAI must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section, when using hook-and-line gear or pot gear to harvest IFQ or CDQ sablefish, and when using pot gear or gear composed of lines with hooks attached or setline gear (IPHC) to harvest IFQ halibut or CDQ halibut.

* * * * *

(1) * * *

(1) * * *

(iii) * * *

(I) If using longline pot gear in the GOA or pot gear in the BSAI, report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds.

* * * * *

8. In § 679.7:

a. In paragraphs (a)(21) and (a)(22), remove the words “§679.28” and add in its place the words “§679.28 (f)”;

b. Remove paragraph (f)(6)(ii) and redesignate paragraph (f)(6)(iii) as paragraph (f)(6)(ii); and

c. Add paragraph (f)(26).

The revisions and additions read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(26) Operate a catcher vessel or a catcher/processor using pot gear to fish for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI and fail to use functioning VMS equipment as required in § 679.42(m).

* * * * *

9. In § 679.22, revise paragraph (a)(6) to read as follows:

§ 679.22 Closures.

(a) * * *

(6) *Pribilof Islands Habitat Conservation Zone*. Directed fishing for groundfish using trawl gear or pot gear, or fishing for halibut using pot gear, is prohibited at all times in the area defined in Figure 10 to this part as the Pribilof Islands Habitat Conservation Zone.

* * * * *

10. In § 679.24, add paragraph (b)(1)(iv) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(1) * * *

(iv) While fishing for IFQ or CDQ halibut in the BSAI.

* * * * *

11. In § 679.25,

a. Revise paragraph (a)(1) introductory text;

b. Add paragraph (a)(1)(v); and

c. Revise paragraphs (a)(2)(i) introductory text and (a)(2)(iii)(C);

The additions and revisions read as follows:

§ 679.25 Inseason adjustments.

(a) * * *

(1) *Types of adjustments*. Inseason adjustments for directed fishing for groundfish or fishing for IFQ or CDQ halibut issued by NMFS under this section include:

* * * * *

(v) Inseason closures of an area, district, or portions thereof, of harvest of specified halibut fisheries.

(2) * * *

(i) Any inseason adjustment taken under paragraphs (a)(1)(i), (ii), (iii), or (iv) of this section must be based on a determination that such adjustments are necessary to prevent:

* * * * *

(iii) * * *

(C) Closure of a management area or portion thereof, or gear type, or season to all groundfish or halibut fishing; or

* * * * *

12. In § 679.28,

- a. Remove and reserve paragraph (f)(4)(ii);
- b. In paragraph (f)(6)(iv) remove “or”; and
- c. Add paragraphs (f)(6)(vi) through (f)(6)(ix).

The additions read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(vi) You operate an Amendment 80 catcher/processor (see § 679.5(s));

(vii) You are fishing for IFQ sablefish in the Bering Sea or Aleutian Islands (see § 679.42(k));

(viii) You are fishing for IFQ sablefish in the GOA using longline pot gear (see § 679.42(l)) or fishing for IFQ or CDQ halibut or CDQ sablefish in the BSAI using pot gear (see § 679.42(m)); or

(ix) You are required under the Crab Rationalization Program regulations at 50 CFR 680.23(d).

* * * * *

13. In § 679.42,

- a. Revise paragraph (b)(1)(i);
- b. Revise paragraphs (k)(1) and (k)(2); and
- c. Add paragraph (m).

The revisions and additions read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(b) * * *

(1) * * *

(i) *IFQ halibut*. IFQ halibut must not be harvested with trawl gear in any IFQ regulatory area.

* * * * *

(k) * * *

(1) *Bering Sea or Aleutian Islands*. Any vessel operator who fishes for IFQ sablefish in the Bering Sea or Aleutian Islands must possess a transmitting VMS transmitter while fishing for IFQ sablefish. The operator of the vessel must comply with VMS requirements at § 679.28(f)(3), (f)(4), and (f)(5).

(2) *Gulf of Alaska*. A vessel operator using longline pot gear to fish for IFQ sablefish in the Gulf of Alaska must possess a transmitting VMS transmitter while fishing for sablefish. The operator of the vessel must comply with VMS requirements at § 679.28(f)(3), (f)(4), and (f)(5).

* * * * *

(m) *BSAI halibut and sablefish pot gear requirements.* Additional regulations that implement specific requirements for any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI using pot gear are set out under § 300.61 Definitions, § 679.2 Definitions, § 679.5 Recordkeeping and reporting (R&R), § 679.7 Prohibitions, § 679.20 General limitations, § 679.22 Closures, § 679.24 Gear limitations, § 679.25 Inseason adjustments, § 679.28 Equipment and operational requirements, § 679.42 Limitations on use of QS and IFQ, and § 679.51 Observer requirements for vessels and plants.

(1) *Applicability.* Any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish with pot gear in the BSAI must comply with the requirements of paragraph (m) of this section. The IFQ regulatory areas in the BSAI include 4B, 4C, 4D, and 4E and the portion of Area 4A in the Bering Sea Aleutian Islands west of 170° 00' W. long.

(2) *General.* To use pot gear to fish for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI, a vessel operator must:

- (i) Retain IFQ or CDQ halibut caught in pot gear if sufficient halibut IFQ or CDQ is held by persons on board the vessel as specified in paragraph (m)(3) of this section; and
- (ii) Comply with other requirements as specified in paragraph (m)(4) of this section.

(3) *Retention of halibut.* A vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish using pot gear must retain IFQ or CDQ halibut if:

- (i) The IFQ or CDQ halibut is caught in any IFQ regulatory area in the BSAI in accordance with paragraph (m) of this section; and
- (ii) An IFQ or CDQ permit holder on board the vessel has unused halibut IFQ or CDQ for the IFQ regulatory area fished and IFQ vessel category.

(4) *Other requirements.* A vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish using pot gear in the BSAI must:

(i) Complete a longline and pot gear Daily Fishing Logbook (DFL) or Daily Cumulative Production Logbook (DCPL) as specified in § 679.5(c); and

(ii) Possess a transmitting VMS transmitter and comply with the VMS requirements at §679.28(f)(3), (f)(4), and (f)(5).

(iii) Report pot gear information required when submitting a PNOL as described in §679.5.

§ 679.51 [Amended]

14. In paragraph (a)(1)(i) introductory text remove the phrase “with hook-and-line gear”.

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